

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Policies and Rules for the) IB Docket No. 98-21
Direct Broadcast Satellite Service)

**COMMENTS OF BELL SOUTH CORPORATION,
BELL SOUTH INTERACTIVE MEDIA SERVICES, INC.
AND BELL SOUTH WIRELESS CABLE, INC.**

BellSouth Corporation and its subsidiaries, BellSouth Interactive Media Services, Inc. and BellSouth Wireless Cable, Inc. (collectively, "BellSouth"), offer the following comments in response to the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.

I. BELL SOUTH'S INTEREST IN THIS PROCEEDING

BellSouth today is pursuing an aggressive strategy of deploying wireless and wired multichannel video technologies throughout its telephone service areas in direct competition with incumbent cable operators. BellSouth has made a substantial commitment to provide digital wireless cable service in major markets throughout the southeastern United States. Specifically, BellSouth has entered into or completed agreements to acquire MDS and ITFS channel rights covering 4.5 million homes (or approximately 3.3 million line-of-sight homes) in and around several large markets in Florida, as well as Atlanta, New Orleans and

Louisville.¹ To date, BellSouth also has obtained cable franchises in 18 communities in Alabama, Florida, Georgia, South Carolina and Tennessee, representing a potential long-term total of almost 1.2 million cable households.²

Although this proceeding is intended primarily to refine the specific rules governing the direct broadcast satellite ("DBS") service, DBS represents a potentially formidable class of multichannel video programming distributor ("MVPD") that competes directly with the incumbent cable operators that undisputedly exercise market power in the MVPD market, as well as with BellSouth's own developing wireless and wired MVPD ventures. Because the Commission has raised questions regarding the extent to which entrenched cable operators should be permitted to extend their dominance into another type of multichannel video programming distribution, BellSouth clearly has an interest in this proceeding.

II. THE NEED FOR A CABLE-DBS CROSS-OWNERSHIP RESTRICTION

The *Notice* has raised a series of questions regarding the wisdom of imposing a prophylactic cable/DBS cross-ownership restriction, as opposed to continuing the Commission's current method of addressing DBS ownership issues solely on a case-by-case basis.³ Although certain cable/DBS combinations clearly have the potential to violate the public interest,

¹ BellSouth launched digital wireless cable service in New Orleans during the fourth quarter of 1997, and is scheduled to launch digital wireless cable service in Atlanta, Jacksonville, Orlando, Daytona Beach and Miami/Ft. Lauderdale within a year.

² See Comments of BellSouth, Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket No. 97-41 (July 23, 1997), at 7; "Cable Should Not Lose Sight of Telco Threat," *Video Technology News* (June 2, 1997).

³ *Notice* at ¶¶ 54-65.

BellSouth believes that the maintenance of an *ad hoc*, case-by-case approach is generally preferable to a broad, inflexible regulatory restriction provided that the Commission is rigorous in its public interest review of transactions that could threaten the development of effective competition in the MVPD market.

There is no question that the policy predicate for a cable/DBS cross-ownership restriction exists. As the Commission has recognized, incumbent franchised cable operators control 87% of the MVPD market,⁴ and continue to be the dominant distributors of multichannel video programming.⁵ Local markets for the delivery of video programming remain highly concentrated, as these entrenched providers continue to erect or sustain “barriers to both entry and expansion by competing distributors.”⁶ Vertical integration of programming has grown overall and proportionately remains sizable (40 percent) relative to all national satellite-delivered cable programming services,⁷ while average monthly cable television rates have increased sharply over the last year, at a rate of 8.5 percent.⁸

⁴ *Id.* at ¶ 54 (citing *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Doc. No. 97-141, FCC 97-423 (released Jan. 13, 1998) (“1997 Report”), at Appendix E, Table E-1).

⁵ *Id.* (citing *1997 Report* at ¶ 11).

⁶ *1997 Report* at ¶ 11.

⁷ *Id.* at ¶¶ 158-59.

⁸ *Id.* at ¶ 11, Overview of Video Programming Distribution Market.

Such findings demonstrate that genuine competition has yet to develop in the vast majority of local multichannel video programming markets.⁹ Thus, BellSouth understands the position of those parties that would impose a blanket rule to prevent the incumbent cable industry from dominating or subverting a distribution medium that otherwise holds great promise as a means of reducing the market power of cable incumbents.

Indeed, this view in all likelihood is driven by the fact that the Commission now has pending before it the review of a proposed assignment by MCI/News Corp. of the 110° W.L. DBS orbital location to Primestar -- a direct-to-home satellite joint venture of the nation's largest cable multiple system operators ("MSOs") and Rupert Murdoch's News Corporation. As BellSouth has repeatedly emphasized, this transaction poses an enormous threat to MVPD competition,¹⁰ and simply cannot be approved absent conditions designed to prevent anticompetitive harm to alternative MVPDs.¹¹ Indeed, the threat to MVPD competition that the proposed MCI/News Corp.-Primestar license assignment poses is precisely the policy concern that a cable/DBS cross-ownership rule would be expected to address.

On the other hand, however, BellSouth believes there may be scenarios in which a party's affiliation with a cable operator, standing alone, would pose no public interest concern.

⁹ *Id.*, *Separate Statement of Chairman William E. Kennard* at 1 ("But less than 15 months away from the sunset of most cable rate regulation, it is clear that broad-based, widespread competition to the cable industry has not developed and is not imminent.").

¹⁰ *See, e.g.*, Comments of BellSouth, File No. 106-SAT-AL-97 (Sept. 25, 1997); Supplemental Response of BellSouth, File Nos. 106-SAT-AL-97, 91-SAT-AL-97 (Feb. 13, 1998).

¹¹ *See* Comments of BellSouth, File No. 106-SAT-AL-97, at 11-13.

In such circumstances, it would make little sense to deprive consumers of the benefits that might be realized from a particular alliance or assignment of DBS frequencies through blind adherence to a *per se* rule.

In the final analysis, BellSouth believes that a cross-ownership restriction is among the most onerous regulatory tools that the Commission possesses. Such a ban should be implemented only in the rarest of circumstances. If the Commission exercises its authority and resolves to aggressively police transactions that threaten emerging MVPD competition -- transactions such as the pending MCI/News Corp.-Primestar license assignment -- then there is no need for a blanket prohibition.

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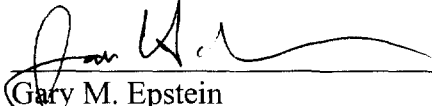
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